

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION COUNTY SUPERIOR COURT
CAUSE NO.

STATE OF INDIANA)
)
Plaintiff)
)
v.)
)
ACCESS RESOURCE SERVICES, INC.,)
doing business as Mind and Spirit and)
Psychic Readers Network,)
)
Defendant.)

490050203PL000458

FILED

MAR 14 2002

Sen. A. M. Taylor
CLERK OF THE
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION, RESTITUTION,
CIVIL PENALTIES, AND COSTS**

The Plaintiff, State of Indiana, by Attorney General Steven Carter, and Deputy Attorneys General Justin G. Hazlett and David A. Paetzmann, for its Complaint alleges:

1. Plaintiff brings this action under the Indiana Deceptive Consumer Sales Act, Indiana Code Ch. 24-5-0.5, to obtain permanent injunctive relief, disgorgement, restitution, civil penalties, costs, and other equitable relief for Defendant's deceptive acts or practices resulting from Defendant's solicitation or sale of "psychic" services to Indiana consumers.

DEFENDANT

2. Defendant Access Resource Services, Inc., ("ARS") is a Delaware corporation with its principal place of business at 2455 E. Sunrise Boulevard, 10th Floor, Fort Lauderdale, Florida 33304. ARS transacts business in the state of Indiana under its own name and using fictitious names including, but not limited to Mind and Spirit and Psychic Readers Network.

GENERAL ALLEGATIONS

3. Since at least March 13, 2000, Defendant has marketed 900-number "psychic" services to Indiana consumers.

4. To induce consumers to call to receive services, Defendant advertises its services via television and other advertising media. These advertisements encourage consumers to call an 800 number, and represent, among other things, that consumers who call the number will receive a free psychic reading of three, five, or more minutes. The advertisements also represent that consumers will receive psychic advice, information, and guidance specific to the consumer who calls.

5. Consumers who call Defendant's 800 numbers speak to live operators who obtain identifying and administrative information from the consumers such as name, address, and date of birth; advise consumers that they will receive free psychic readings; provide the consumers with 900 numbers to call to receive the psychic readings; and instruct the consumers to call the 900 numbers immediately to obtain their free readings.

6. Consumers who call the 900 numbers provided by Defendant are greeted by a recorded message repeating much of the information provided during their calls to the 800 numbers. Consumers are advised, specifically: that they will receive free time and a free reading as advertised; that if they are put on hold they should dial the sequence "* - 9 - 1 - 1" on their telephones, hang up, and then call the 900 number again to avoid incurring charges; that if they are told they will receive more free minutes than the amount advertised, they should dial the "* - 9 - 1 - 1" on their telephones, hang up, and then call the 900 number again; and that they will hear a beep indicating that their free time has elapsed and that they must hang up within three seconds of the beep or incur charges.

7. Defendant does not advise consumers that receiving advertised free time is contingent upon terminating the call as instructed by Defendant's live 800 number operators or 900 number recorded message.

8. Defendant does not advise consumers that they will be charged for the full duration of their calls, and will receive no free minutes, if they allow the calls to exceed the advertised free time period.

9. Defendant's signal indicating that the consumer's free time has elapsed is either difficult to hear, or does not sound. When the signal does sound, it often does so while the consumer or Defendant's agent, employee, or representative is speaking, making it too difficult for the consumer to recognize the signal and act within Defendant's prescribed three seconds to terminate the call.

10. Defendant bills Indiana consumers who have never made calls to Defendant's 800 or 900 numbers or otherwise received services from Defendant. If such consumer refuses to pay Defendant's 900 charge appearing on the consumer's bill, Defendant attempts to collect the charge from the consumer. Defendant treats consumers who contact it to dispute such erroneous charges abusively and derisively, and represents to them that the charge is valid and that they owe the charge, without investigating the validity of the alleged debt.

11. Contrary to Defendant's recorded instructions advising consumers of what to do if they are put on hold or told that they will not be charged while on hold, Defendant's agents, employees, or representatives encourage consumers to remain connected to Defendant's 900 number while holding, advising consumers that they will not be charged for the time during which they are on hold.

12. During calls to Defendant's 900 numbers, Defendant's representatives sometimes threaten and intimidate consumers into accepting and using extended "free" time, or additional time, for which they are subsequently billed. Defendant's threats include:

- a. Representations that the consumer can no longer receive a shorter free reading, but must instead accept the longer reading;
- b. Representations that the consumer will be charged for the full amount of the extended or additional time if the consumer hangs up before the extended or additional time has elapsed;
- c. Representations that Defendant has the authority to disconnect the consumer's telephone;
- d. Representations that Defendant's representative can, in as little time as ten minutes, obtain a court order to disconnect the consumer's telephone; and
- e. Representations that Defendant or its representatives disconnect many consumer telephones each day for failure to pay charges incurred.

ALLEGATIONS SPECIFIC TO PARTICULAR CALLERS

13. On March 27, 2001, Yolanda Clubb called Defendant in response to a telemarketed solicitation offering her a free ten minute psychic reading. Ms. Clubb terminated the call prior to expiration of the ten minute period but was subsequently billed for the call.

14. On June 23, 2001, Linda K. Tipton called Defendant in response to Defendant's internet advertisement for a free three to five minute reading. Ms. Tipton terminated the call prior to expiration of the five minute free period, and prior to hearing any audible tone signifying the end of the free period. Ms. Tipton subsequently was billed the amount of \$24.99 for the call.

15. On October 4, 2001, Clifford Cox called Defendant in response to a solicitation for a free psychic reading. Upon information and belief, the total duration of Mr. Cox's call to Defendant was approximately 6 minutes. Mr. Cox was subsequently billed for a six minute call in the amount of \$14.95.

16. On October 24, 2001, Elizabeth Faubion called Defendant in response to an email solicitation offering a free psychic reading. Upon placing the call, Ms. Faubion was transferred and placed on hold for an undetermined amount of time before being connected with an alleged psychic. Upon information and belief, the total duration of Ms. Faubion's call to Defendant was approximately 36 minutes. Ms. Faubion was subsequently billed for a 36 minute call in the amount of \$166.17, despite being connected to the alleged psychic only a portion of that time.

17. On January 11, 2002, David Cox called Defendant in response to a television advertisement offering a free three minute psychic reading. The total duration of Mr. Cox's call, including approximately one and one-half minutes waiting to be connected with an alleged psychic, was approximately twelve and one-half minutes. An audible tone signifying the end of the "free" portion of the reading was heard three minutes and twenty-five seconds from the beginning of the call. Mr. Cox was subsequently billed \$44.91 for a twelve minute call.

18. On January 11, 2002, James Black called Defendant in response to a television advertisement offering a free three minute psychic reading. The total duration of Mr. Black's call, including approximately one and one half-minutes waiting to be connected to an alleged psychic, was approximately twenty-one minutes. An audible tone signifying the end of the "free portion" of the reading was heard three minutes and twenty-seven seconds from the beginning of the call. Mr. Black was subsequently billed \$89.82 for a twenty-one minute call.

19. On January 11, 2002, Terry Bryant called Defendant in response to a television advertisement offering a free three minute psychic reading. The total duration of Mr. Bryant's call, including approximately one and one half minutes waiting to be connected to an alleged psychic, was fifteen minutes and one second. An audible tone signifying the end of the "free" portion of the reading was heard three minutes and eleven seconds from the beginning of the call. Mr. Bryant subsequently was billed \$69.86 for a seventeen minute call.

20. On January 11, 2002, David Cox again called Defendant in response to the television advertisement offering a free three minute psychic reading. The total duration of Mr. Cox's second call, including approximately two minutes and thirty-eight seconds waiting to be connected to an alleged psychic, was approximately seventeen minutes. An audible tone signifying the end of the "free" portion of the reading was heard three minutes and twenty-nine seconds from the beginning of the call. Mr. Cox was subsequently billed \$69.86 for a seventeen minute call.

21. On January 11, 2002, James Black again called Defendant. Defendant's representative advised Mr. Black that he would receive a free five minute psychic reading and that a beep would let him know when five minutes had passed. Two minutes and forty-eight seconds from the beginning of the call Mr. Black was informed that his five free minutes would not start until he had been connected to a psychic. An audible tone was heard by Mr. Black three minutes and thirty-one seconds from the beginning of the call. Nine minutes and fourteen seconds from the beginning of the call, Mr. Black was informed that a psychic would be right with him, that he was entitled to five free minutes, and that his free minutes would not start until he began speaking with the psychic. Twelve minutes and twenty-five minutes from the beginning of the call, Mr. Black was informed that he would not be billed for the time he was

waiting on hold. Approximately twenty-four minutes from the beginning of the call, the majority of which consisted of time placed on hold, and without having been connected with an alleged psychic, Mr. Black terminated the call. Mr. Black was subsequently billed \$104.79 for a twenty-four minute call.

22. On January 11, 2002, James Black again called Defendant. Defendant's representative informed Mr. Black that he would receive a free three minute psychic reading and that a beep would let him know when the three minutes had passed. The total duration of Mr. Black's call, including approximately one and one-half minutes waiting to be connected to an alleged psychic, was approximately nineteen minutes. An audible tone signifying the end of the "free" portion of the reading was heard three minutes and twenty-five seconds from the beginning of the call. Mr. Black was subsequently billed \$79.84 for a nineteen minute call.

23. On January 11, 2002, Terry Bryant again called Defendant. Defendant's representative informed Mr. Bryant that he would receive a free five minute psychic reading and that a beep would let him know when the five minutes had passed. The total duration of Mr. Bryant's call, including one minute and forty-six seconds waiting to be connected with an alleged psychic, was approximately twelve minutes. No audible tone was detected at any time during the call. Mr. Bryant was subsequently billed \$34.93 for a twelve minute call.

24. On March 12, 2002, David Cox called Defendant. Defendant's representative informed Mr. Cox that he would receive a free five minute psychic reading, and that Mr. Cox had also been selected to receive a free one hour psychic reading. Mr. Cox agreed to the free one hour reading. Mr. Cox was then informed that it would be necessary for him to remain on the phone for the entire hour, and if he terminated the call before one hour had passed, he would be billed \$500.00 for the call. Mr. Cox informed Defendant's representative that he may not want

to stay on the phone for an entire hour, and was told that since he had agreed to a one hour reading, Defendant was going to bill him \$500.00. Defendant's representative also told Mr. Cox that since he did not believe Mr. Cox would pay the bill, he was going to have a judge order Mr. Cox's telephone shut off, that Defendant's representative has five thousand telephones shut off each week, and if Mr. Cox didn't want his telephone shut off he should stay on the telephone the entire hour.

25. In truth and in fact, federal law prohibits disconnection of telephone service for failure to pay a telephone bill resulting from charges associated with calls to 900 numbers.

VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

Count I

26. During the free time period, Defendant's representatives elicit the name, address, occupation, and other identifying or administrative information from the consumer, resulting in the consumer receiving either no reading during the free time period advertised by Defendant, or a reading of shorter duration than advertised by Defendant.

27. Through its representations and acts described in paragraphs 4, Defendant violates Ind. Code § 24-5-0.5-3(a)(1) by misrepresenting that the readings have the performance, characteristics, uses, or benefits of providing advice, information, and guidance specific to consumers for the duration of the free time period advertised, which Defendant knows or should reasonably know the readings do not provide.

Count II

28. Despite Defendant's advertisements and repeated representations that consumers who call in response to Defendant's advertisements will receive free readings, the charges appearing on a consumer's telephone bill for services provided by Defendant reflect the total time the consumer was connected to Defendant's 900 telephone number. Defendant does not deduct the advertised free time from the time charges appearing on the consumer's telephone bill.

29. Through its representations and acts identified in paragraphs 4 through 6 and 13 through 23, Defendant violates Ind. Code § 24-5-0.5-3(a)(1) by misrepresenting that the telephone calls have the characteristic or benefit of providing free time for consumers' use, which Defendant knows or should reasonably know the calls do not provide.

Count III

30. Through its representations and acts identified in paragraphs 4 and 7 through 8, and 13 through 23, Defendant violates Ind. Code § 24-5-0.5-3(a)(8) by failing to disclose 1) a necessary contingency to avoid incurring charges and 2) the consequence of the consumers' failure to timely terminate the call, thereby misrepresenting that the telephone calls do not involve an obligation the calls do in fact involve, and which Defendant knows or should reasonably know the calls involve.

Count IV

31. Through its contradictory instructions to consumers, including but not limited to those identified in paragraphs 13 through 23 above, regarding what to do if placed on hold or if told that they will not be charged while on hold, Defendant violates Ind. Code § 24-5-0.5-3(a)(8)

by representing that the calls involve the right or remedy of allowing consumers the opportunity to avoid incurring charges while holding, which right or remedy the calls do not have, and which the Defendant knows or should reasonably know the calls do not have, and Ind. Code § 24-5-0.5-3(a)(1) by misrepresenting the correct method of terminating the call without incurring charges .

Count V

32. Defendant's recorded instructions advising consumers of what to do if they are put on hold, if they are told that they will not be charged while on hold, or if they are told they will receive more free time place the onus of avoiding overcharges and ensuring fair treatment upon the consumers. The instructions demonstrate Defendant's knowledge of continuing misrepresentation by its employees, agents, or representatives.

33. Defendant's recorded instructions and its actions identified in paragraphs 11 and 13 through 23 demonstrate that Defendant is knowingly and intentionally committing the violations of Count I through Count IV.

Count VI

34. Through Defendant's representations to consumers that Defendant can cause disconnection of a consumer's telephone service for non-payment of bills resulting from calls to Defendant's 900 numbers, when Defendant knows or should reasonably know that it cannot, as set forth in paragraphs 12 and 24, Defendant violates Ind. Code § 24-5-0.5-3(a)(1) by misrepresenting the characteristics of a consumer transaction.

35. Defendant's acts and misrepresentations set forth in paragraphs 12 and 24 were committed with knowledge and intent to deceive.

PRAYER FOR RELIEF

Wherefore the Plaintiff, State of Indiana, requests the Court enter judgment against Defendant for the following relief:

- A. A permanent injunction enjoining Defendant from violating the Indiana Deceptive Consumer Sales Act, pursuant to Ind. Code § 24-5-0.5-4(c)(1).
- B. Payment of all money unlawfully received from aggrieved consumers, including but not limited to those identified in paragraphs 13 through 24, to be held in escrow for distribution to aggrieved consumers, pursuant to Ind. Code § 24-5-0.5-4(c)(2).
- C. Payment of civil penalties in the amount of \$500.00 for each of Defendant's knowing violations of the Deceptive Consumer Sales Act, pursuant to Ind. Code § 24-5-0.5-4(g).
- D. Payment of civil penalties in the amount of \$500.00 for each of Defendant's incurable deceptive acts, pursuant to Ind. Code § 24-5-0.5-8.
- E. Payment of costs to the Plaintiff, for the reasonable costs of the Attorney General's investigation and prosecution related to this action, pursuant to Ind. Code § 24-5-0.5-4(c)(3).
- F. All other just and proper relief.

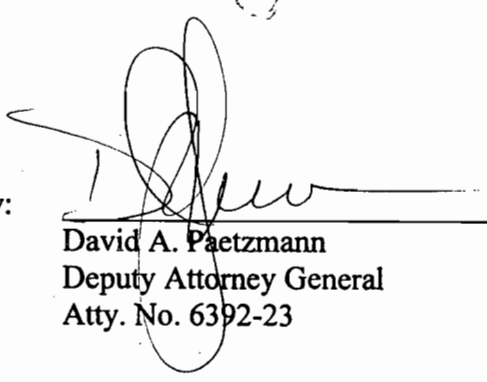
Respectfully submitted,

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